

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JARED ALLEN,

Plaintiff,

-vs-

JEFF MORTON and PAIN FREE LIFE
LIFE CENTERS OF MICHIGAN, LLC,

Defendants.

CASE NO: 18-CV-13902-GCS-APP

HON. GEORGE CARAM STEEH

MAGISTRATE ANTHONY P. PATTI

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**DEFENDANTS' ANSWER TO COMPLAINT, AFFIRMATIVE
DEFENSES AND RELIANCE UPON JURY DEMAND**

NOW COME Defendants, JEFF MORTON and PAIN FREE LIFE
CENTERS OF MICHIGAN, LLC, by and through their attorneys, THE CRONIN

LAW FIRM, PLLC, by Sabrina Shaheen Cronin (P48699) and Bryan Cermak (P31933), and in Answer to the Complaint of Jared Allen, states unto this Honorable Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Answering paragraph 1, Defendants deny the matter in controversy exceeds seventy-five thousand (\$75,000) dollars, for the reason that such averment is untrue. In further answering to paragraph 1, Defendants neither admit nor deny the truth of the remaining averments contained therein for the reason that they are conclusions of law and require no answer. However, to the extent an answer is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

2. Answering paragraph 2, Defendants neither admit nor deny the truth of the averments contained therein for the reason that they are conclusions of law and require no answer. However, to the extent an answer is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

3. Answering paragraph 3, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

4. Admitted.

5. Admitted.

6. Answering paragraph 6, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admits nor denies same, but leaves Plaintiff to his proofs.

Answering paragraph 1, Defendants neither admit nor deny the truth of the averments contained therein for the reason that they are conclusions of law and require no answer. However, to the extent an answer is necessary, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

NATURE OF THE ACTION

7. Answering paragraph 7, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

8. Answering paragraph 8, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

9. Answering paragraph 9, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

10. Admitted.

11. Answer paragraph 11, Defendants deny any deceptive or infringing conduct as alleged by Plaintiff for the reason that such averments are untrue. In further answer to paragraph 11, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

12. Answering paragraph 12, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

13. Answering paragraph 13, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

14. Answering paragraph 14, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

15. Answering paragraph 15, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

16. Answering paragraph 16, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

17. Answering paragraph 12, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

FIRST CAUSE OF ACTION

False Endorsement, False Advertising, and Unfair Competition in Violation of 15 U.S.C. § 1125

18. Defendants incorporate, by reference, their Answers to paragraphs 1 through 17, as if set forth herein.

19. Answering paragraph 19, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

20. Answering paragraph 20, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

21. Answering paragraph 21, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

22. Answering paragraph 22, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

23. Answering paragraph 23, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

24. Answering paragraph 24, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

25. Answering paragraph 25, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

26. Answering paragraph 26, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

27. Answering paragraph 27, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

28. Answering paragraph 28, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

29. Answering paragraph 29, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

SECOND CAUSE OF ACTION

Rights of Publicity Violation of Tennessee Annotated Code §47-25-1101 et seq. and Tennessee Common Law

30. Defendants incorporate, by reference, their Answers to paragraphs 1 through 29, as if set forth herein.

31. Answering paragraph 31, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

32. Answering paragraph 32, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

33. Answering paragraph 33, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

34. Answering paragraph 34, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

35. Answering paragraph 35, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

36. Answering paragraph 36, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

37. Answering paragraph 37, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

38. Answering paragraph 38, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

THIRD CAUSE OF ACTION
Unfair Competition in Violation of Michigan Common Law and
Michigan Compiled Laws §445.903

39. Defendants incorporate, by reference, their Answers to paragraphs 1 through 38, as if set forth herein.

40. Answering paragraph 40, subparagraphs a. through e. inclusive, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

41. Answering paragraph 41, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

42. Answering paragraph 42, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

43. Answering paragraph 43, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

44. Answering paragraph 44, Defendants lack knowledge or information sufficient to form a belief as to the truth of the averments contained therein and, therefore, neither admit nor deny same, but leaves Plaintiff to his proofs.

WHEREFORE, Defendants JEFF MORTON and PAIN FREE LIFE CENTERS, LLC, request that Plaintiff's Complaint against them be dismissed, with prejudice, and that Defendants be awarded appropriate costs and attorney fees incurred in having to defend this frivolous action.

Respectfully Submitted:

THE CRONIN LAW FIRM, PLLC

Dated: February 4, 2019

/s/ Sabrina Shaheen Cronin /
Sabrina Shaheen Cronin (P48699)
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AFFIRMATIVE DEFENSES

NOW COME Defendants JEFF MORTON and PAIN FREE LIFE CENTERS LLC, by and through their attorneys, THE CRONIN LAW FIRM, PLLC assert the following affirmative defenses and other defenses in answer to the Complaint filed by Plaintiff, JARED ALLEN, without assuming any burden of production or proof that it would not otherwise bear. Defendants JEFF MORTON and PAIN FREE LIFE CENTERS LLC also reserves the right to supplement or amend any part of its Answer, including affirmative and additional defenses, or to delete or withdraw affirmative defenses or to add counterclaims as may become indicated after a reasonable opportunity for discovery and additional facts or claims are asserted or discovered.

1. Plaintiff's Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred, in whole or in part, because any use by Defendant of Plaintiff's name, image and statements was de minimus and caused no likelihood of confusion and no damages.

3. Even if an infringement occurred (which it did not), Plaintiff's claims are barred by the doctrine of de minimus non curat lex ("the law takes no account of trifles").

4. Even if an infringement occurred (which it did not), Plaintiff's claims are barred by the common law principle of injuria absque damno ("wrong without damage").

5. Plaintiff's claims are barred, in whole or in part, because the infringement, if any, was innocent.

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of nominative fair use or comparative advertising.

7. Plaintiff's claims for punitive damages are barred, in whole or in part, because punitive damages are not recoverable in cases brought under the Lanham Act.

8. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

9. Plaintiff's claims are barred in that he fails to state what if any damages he sustained.

10. Defendants use, if any, of Plaintiff's name, image and or statements was a fair use.

11. Defendants use, if any, of Plaintiff's name, image and or statements is not likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiff with Defendants, or as to the origin, sponsorship, or approval of Defendants goods, services, or commercial activities by Plaintiff.

12. Defendants use, if any, of Plaintiff's name, image and or statements is news reporting and news commentary.

13. Plaintiff's name is not protected as a mark as defined under 15 U.S.C. §1125.

14. Defendants use, if any, of Plaintiff's name, image and or statements was an advertising or promotion that permits consumers to compare goods or services.

15. Defendants use, if any, of Plaintiff's name, image and or statements was used in identifying and parodying, criticizing, or commenting upon the Plaintiff or the goods or services of the Plaintiff or the goods or services the Plaintiff publicly endorses.

16. Plaintiff's actions as to Defendant Jeff Morton are barred as he was not acting in his individual capacity, but as an agent, officer or employee of Defendant Pain Free Life Centers of Michigan.

17. Plaintiff's allegations against Defendant Jeff Morton to not meet the requirements to pierce the corporate veil of Pain Free Life Centers of Michigan.

18. Plaintiff's allegations against Defendant Jeff Morton are not stated with the required specificity to establish personal liability.

19. Plaintiff has failed to state a claim as to Defendant Jeff Morton.

20. Plaintiff lacks standing to bring this action as the name, image or statements used by Defendant and complained of by Plaintiff, if any, are not protected under federal law or the Lanham Act.

21. This Court lack jurisdiction as the amount in controversy is less than seventy-five (\$75,000) dollars.

22. Defendant reserves the right to amend or add such additional separate affirmative defenses that may become available during discovery or at trial and conform any such additional defenses that it may have to the evidence as permitted by Fed.R.Civ.P. 15(b).

Respectfully Submitted:

THE CRONIN LAW FIRM, PLLC

Dated: February 4, 2019

/s/ Sabrina Shaheen Cronin_____
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RELIANCE UPON JURY DEMAND

NOW COME Defendants JEFF MORTON and PAIN FREE LIFE CENTERS, LLC, by and through their attorneys, THE CRONIN LAW FIRM, PLLC, and hereby relies upon the Jury Demand filed by Plaintiff, JARED ALLEN in the within cause of action.

Respectfully Submitted:

THE CRONIN LAW FIRM, PLLC

Dated: February 4, 2019

/s/ Sabrina Shaheen Cronin /
Sabrina Shaheen Cronin (P48699)
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CERTIFICATE OF SERVICE

I hereby that on February 4, 2019, I electronically filed Defendants' Answer to Complaint, Affirmative Defenses and Reliance Upon Jury Demand and this Certificate of Service with the Clerk of the Court, using the Court's ECF system which will send notification to all counsel of record and upon Michelle Browning Coughlin, Sussan Harshbarger and Mathew Lubozynski of Wyatt, Tarrant & Combs, LLP, 500 W. Jefferson Street, Suite 2800, Louisville, KY 40202-2898 (seeking admission) as Counsel for Plaintiff Jared Allen, via email to mcoughlin@wyattfirm.com, sharshbarger@wyattfirm.com and mlubozynski@wyattfirm.com.

/s/ Althea M. Hooks /
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